

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CORNELL HESTER,	§
	§ No. 587, 2010
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
	§ for New Castle County
STATE OF DELAWARE,	§ Cr. ID 0912010604
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 10, 2011

Decided: August 23, 2011

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 23rd day of August 2011, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) A Superior Court jury convicted the appellant, Cornell Hester, in June 2010 of second degree burglary, second degree unlawful imprisonment, harassment, two counts of criminal mischief, and malicious interference with emergency communications. The Superior Court sentenced Hester on September 10, 2010 as an habitual offender to a total period of fourteen years and nine months

at Level V incarceration to be suspended after serving twelve years for probation. This is Hester's direct appeal from that sentence.¹

(2) The record at trial fairly establishes the following facts: On December 16, 2009, Valerie Wilkins was home alone. At about 8:00 p.m., she heard a knock at the door and found Hester, her ex-boyfriend, on her doorstep. Hester asked her to open the door. Wilkins told Hester that if he did not leave, she would call the police. Wilkins then called her mother and told her that Hester was at the door. As she retreated upstairs, Hester kicked in the front door and chased her. Wilkins attempted to hide in her daughter's room. Hester broke through the bedroom door and grabbed Wilkins by the shirt, demanding her mobile phone, which she had dropped as she was fleeing upstairs. Hester took Wilkins room to room with him in search of the mobile phone, which was ringing. After finding the phone on the stairs, Wilkins pleaded with Hester to leave because her children would be returning home from church soon. Hester eventually allowed Wilkins to answer her mobile phone and speak with her daughter. Wilkins' mother and step-father arrived at her house a short while later along with Wilkins' three children. Hester fled.

(3) Hester filed his opening brief on appeal, as well as several "supplements" to his opening brief. The only issues raised in the document entitled "Appellant's Opening Brief" challenge the legality of a guilty plea entered by Hester on February

¹ Hester requested and was permitted to dismiss his court-appointed counsel and represent himself on appeal.

10, 2011 to a charge of second degree assault in Criminal ID No. 1002002758. This Court has no jurisdiction to consider these claims, however, because Hester never filed an appeal from his guilty plea and sentence in that case.² Moreover, Hester's failure to raise any legal arguments challenging his convictions and sentence in Criminal ID No. 0912010604 in the body of his opening brief on appeal could properly be deemed a waiver of any legal issues for this Court's review.³ Nonetheless, because Hester is acting as his own counsel in this direct appeal, the Court will afford a measure of leeway to the defendant and review the issues raised in Hester's "supplements" to his opening brief,⁴ even though this additional argument was not presented in accordance with the Court's rules and could have been stricken.⁵

(4) While difficult to understand, Hester appears to argue that the judge at his trial was biased for not dismissing Hester's public defender and appointing substitute counsel to represent him or else permitting Hester to represent himself at trial. Hester also appears to argue that all of the witnesses at his trial were lying and that the

² *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

³ *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993) (holding that a defendant's failure to raise a legal issue in the text of the opening brief generally constitutes a waiver of that issue on appeal).

⁴ *Yancey v. Nat'l Trust Co.*, 1998 WL 309819 (Del. May 19, 1998) (noting that pro se litigants are generally afforded some degree of leniency in the application of the briefing requirements on appeal).

⁵ See Del. Supr. Ct. R. 15(a)(vi) (2011), which provides that no other brief (besides the opening, answering and reply brief) or any other writing containing argument may be submitted without prior leave of the Court. Hester never sought the Court's permission to file his "supplements." Thus, his supplemental filings are nonconforming documents that were subject to being stricken, in the Court's discretion, pursuant to Supreme Court Rule 34.

evidence, therefore, was insufficient to sustain his convictions. Finally, Hester argues that he received ineffective assistance of counsel.

(5) The record reflects that Hester was indicted on February 1, 2010. On May 11, 2010, Hester filed a motion seeking to dismiss his court-appointed counsel and requesting that new counsel be appointed to represent him. On May 24, 2010, at his final case review, Hester withdrew his motion to dismiss his counsel. Thereafter, the jury was selected and sworn on June 2, 2010. During a recess of trial, after several witnesses had already testified, Hester again requested the trial judge to dismiss his counsel. Hester represented to the judge that he had filed a federal lawsuit against his lawyer and the public defender's office. Hester argued that his lawsuit created an ethical conflict that required his lawyer to be dismissed. The judge denied Hester's motion on the ground that Hester's lawsuit alleging ineffective assistance of counsel did not create a conflict of interest per se,⁶ and Hester's belated request to dismiss his counsel would be too prejudicial and disruptive to the trial already in progress.

⁶ *Woods v. State*, 1996 WL 666009 (Del. Nov. 12, 1996) (the mere filing of a complaint against a lawyer does not, without more, create a disqualifying conflict of interest).

(6) We review de novo⁷ a trial court's alleged denial of a defendant's constitutional right to self-representation.⁸ While the right to self-representation is fundamental, a defendant's exercise of that right is not unqualified.⁹ A request to proceed pro se must be made in a timely fashion.¹⁰ Once a trial has begun, the trial court may curtail a defendant's right to self-representation.¹¹ The trial judge considering the motion must weigh the legitimate interests of the defendant against the prejudice that may result from the potential disruption of the proceedings already in progress.¹² Sometimes the defendant's right to represent himself may be outweighed by the State's interest in ensuring the integrity and the efficiency of the trial.¹³

(7) In this case, the Superior Court noted that Hester had filed a motion seeking the appointment of substitute counsel three weeks before trial but had withdrawn the motion the week before trial during the final case review. The record reflects that Hester did not raise the issue again until the middle of trial when he informed the trial judge that he had filed a federal lawsuit against his

⁷ *Hartman v. State*, 918 A.2d 1138, 1141 (Del. 2007).

⁸ We note that Hester never actually asserted to the Superior Court that he wanted to represent himself at trial, although he makes that claim on appeal. In fact, Hester simply requested that the Superior Court dismiss his counsel. We give Hester the benefit of the doubt, despite his failure to assert his right to self-representation, and review his argument on appeal as if he had unequivocally asserted this constitutional right.

⁹ *Stigars v. State*, 674 A.2d 477, 479 (Del. 1996).

¹⁰ *Christopher v. State*, 930 A.2d 894, 896 (Del. 2007).

¹¹ *Zuppo v. State*, 807 A.2d 545, 548 (Del. 2002).

¹² *Id.*

¹³ *Id.*

counsel.¹⁴ The trial judge concluded that the filing of a complaint without more did not create a per se conflict of interest requiring the appointment of new counsel. Thus, the only alternative would be to allow Hester to represent himself. The trial judge further concluded, however, that even assuming Hester wanted to represent himself the resulting prejudice caused by such a disruption in the middle of trial outweighed any interest Hester might have in self-representation. Under these circumstances, we find no error in the Superior Court's denial of Hester's untimely and ambiguous attempt to exercise his right to self-representation.

(8) Hester's second argument is that the evidence was insufficient to support his convictions. He seems to assert that all of the State's witnesses lied under oath and that the State presented no physical evidence linking him to the crimes. In reviewing a claim of insufficient evidence, this Court views the evidence in the light most favorable to the State to determine whether any rational juror could have found the essential elements of the crime beyond a reasonable doubt.¹⁵ In this case, the testimony of Valerie Wilkins and the other State witnesses was more than sufficient to prove Hester's guilt beyond a reasonable doubt of all the crimes with which he was charged. To the extent Hester suggests that the witnesses all committed perjury, he has offered no evidence, and we find

¹⁴ Hester apparently gave the judge a copy of a notice of a filing in the federal district court but did not provide a copy of an actual complaint.

¹⁵ *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

nothing in the record, to support such serious allegations. The jury is the sole judge of the credibility of the witnesses.¹⁶ It was entirely within the jury's purview to assess and accept the veracity of the witnesses' testimony. We find the evidence more than sufficient to support Hester's convictions beyond a reasonable doubt.

(9) Finally, Hester argues that he was denied his constitutional right to the effective assistance of counsel. This Court, however, will not consider claims of ineffective assistance of counsel for the first time on direct appeal.¹⁷ Accordingly, we will not review this claim in this proceeding.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is hereby AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹⁶ *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980).

¹⁷ *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).